

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

The New PJM Companies	Docket Nos. ER03-262-009
American Electric Power Service Corp.	ER03-262-008
On behalf of its operating companies	ER03-262-007
Appalachian Power Company	
Columbus Southern Power Company	
Indiana Michigan Power Company	
Kentucky Power Company	
Kingsport Power Company	
Ohio Power Company, and	
Wheeling Power Company	
Commonwealth Edison Company, and	
Commonwealth Edison Company of Indiana, Inc.	
The Dayton Power and Light Company, and	
PJM Interconnection, LLC	

American Electric Power Company	Docket Nos. EC98-40-000
and	ER98-2770-000
Central and South West Corporation	ER98-2786-000

**ORDER ESTABLISHING PROCEDURAL SCHEDULE  
AND RULES FOR THE CASE**

**(December 3, 2003)**

1. A prehearing conference was held in this proceeding on December 2, 2003 to discuss a procedural schedule and requirements for completing a decisional record. A proposed schedule that I had appended to my order convening the prehearing conference was discussed, along with an alternative offered by PJM Interconnection, LLC (“PJM”). The two schedules were similar, but the one put forward by PJM called for the submission of two rounds of testimony and one set of briefs, whereas the schedule I had circulated called for one round of testimony and two sets of briefs.

2. After considering points made by several parties in the discussion at the conference, I have decided to adopt the following procedural schedule in this proceeding:

Pre-filed Direct Testimony due from all parties..... January 7, 2004

Pre-Filed Rebuttal and Pre-trial briefs due..... January 22, 2004

Hearings begin.....January 26, 2004

Post Hearing Briefs due..... February 12, 2004

Oral Argument before ALJ (in lieu of reply briefs) .....February 24, 2004

Initial Decision due.....March 15, 2004

3. In my judgment, this schedule will allow the parties an adequate opportunity for discovery, provide adequate time for the development of evidentiary submissions, provide an opportunity for rebuttal presentations, and permits two briefing opportunities for the parties to argue their cases. The oral argument in lieu of reply briefs will allow one additional opportunity for parties to respond to arguments that may have been overlooked in the initial briefs, and allow the Presiding Judge to clarify any record problems.

4. The procedural rules will be those attached hereto, and shall preempt the Rules for Conduct of the Hearing that were distributed at the Prehearing Conference on December 2, 2003.

### **RULES FOR THE CONDUCT OF THE HEARING**

5. This proceeding shall be conducted in accordance with these rules. The rules are intended to ensure an orderly, courteous and efficient proceeding.

### **DISCOVERY**

- (a) The parties shall make serious good faith efforts to facilitate discovery and to resolve discovery disputes without intervention from the Judge. Any motion to compel discovery or motion for protective order shall detail the efforts made to resolve the underlying discovery dispute.
- (b) Discovery shall begin immediately and shall take place on a rolling schedule, with parties required to make their best efforts to respond fully within 5 business days of the date of service of the request, providing an explanatory statement and a date when the request will be answered. Objections to discovery requests should be communicated electronically with a copy to the Presiding Administrative Law Judge. Parties are encouraged to resolve discovery disputes among themselves. Motions to compel shall be filed within 48 hours of the electronic service of the objection, with full supporting argument, if the matter cannot be resolved between the parties. Motions to compel will be considered via conference call or E-mail. Discovery requests related to

prefiled direct testimony must be communicated by January 12, 2004.

- (c) Copies of all discovery requests and answers should be sent to the Presiding Administrative Law Judge by electronic filing.

### **PRE-FILED TESTIMONY AND OTHER EXHIBITS**

- (a) In accordance with the OALJ's Notice to the Public concerning its Uniform Exhibit Number System (issued June 8, 1998), all exhibits shall have an alpha-numeric designation, containing no more than three (3) letters, which identifies the sponsor and the sequential number of that party's exhibits. All exhibits shall be marked with a permanent and party-specific designation (e.g., "S-1" for Staff Exhibit #1).
- (b) Each party's exhibits shall be numbered in series, paginated and three (3)-hole punched. Exhibits may be combined in a single binder.
- (c) Prior to commencement of the hearing, each party shall provide the Judge with two (2) copies of its proposed exhibits and an index to its pre-filed testimony and supporting exhibits. At least one (1) set of exhibits provided to the Judge shall be tabbed for quick reference. The index to exhibits shall be prepared in four (4) vertical column format as follows: (1) Exhibit Number; (2) Descriptive Title; (3) space designated "Marked for Identification"; and (4) space designated "Received into Evidence." Each party also shall provide copies of its exhibits to every other party prior to hearing commencement.
- (d) The pre-filed testimony of each witness shall be designated an exhibit and shall be prefaced by a summary of the testimony and any exhibits supporting the testimony.
- (e) Any exhibit offered into evidence shall be properly authenticated and shall have a proper foundation laid for its admission.

### **ISSUES**

- (a) The hearing shall be conducted in accordance with the issues statement in the Commission's order.
- (b) The hearing parameters shall be limited to those issues.

### **EXAMINATION OF WITNESSES**

- (a) Examination of witnesses generally shall be limited to direct, cross and re-direct. As a consequence, cross- and re-direct examination shall be limited to the respective scopes of direct and cross-examination.
- (b) Succeeding cross-examiners will not be permitted to engage in repetitive cross-examination. Any counsel intending to cross-examine a witness therefore shall be present during all preceding cross-examination of the witness.
- (c) Friendly cross-examination will not be permitted. This rule applies to a party's own witnesses, as well as to other parties' witnesses taking the same side of an issue.
- (d) Objections to cross-examination questions may be made only by counsel sponsoring the witness.
- (e) A request for clarification of a question may be made only by the witness or the Judge.
- (f) Counsel will be permitted to conduct follow-up examination concerning any question asked of a witness by the Judge.
- (g) All witnesses should be available on the first day of hearings to be sworn, unless prior arrangements have been made with the Presiding Administrative Law Judge.

### **HEARING CONDUCT**

- (a) Counsel and witnesses shall observe proper decorum at all times. Counsel will be expected to address witnesses and opposing counsel in a courteous and professional manner. Direct exchanges between opposing counsel are not permitted; statements addressed to opposing counsel shall be directed to the Judge. Non-disruptive consultation among counsel, co-counsel and witnesses is permitted.
- (b) Persons attending the hearing may come and go as they please, provided that they do not disturb the proceedings. Newspaper reading is not permitted in the hearing room.
- (c) Counsel will be allowed reasonable time for argument on motions or objections before a ruling is made. Once a ruling is made, no further

discussion of the matter will be entertained.

- (d) Any document which counsel wishes to show to a witness must first be shown to opposing counsel. Two (2) copies of any document offered by reference or for taking official notice must be provided to the Judge.
- (e) Cell phones must be turned off or the ringer disabled during the hearing. No food or coffee is permitted in the hearing room. Only water is allowed in the hearing room.

### **BRIEFS**

- (a) All briefs submitted in the proceeding shall reference each issue in numerical order and by caption. A party electing not to address a specific issue shall so indicate in the body of the brief in lieu of providing narrative argument on the issue. This procedure is intended to facilitate comparison of the parties' arguments on an issue-specific basis.
- (b) Parties sponsoring evidentiary submissions are required to submit a short pre-hearing brief summarizing the party's positions, the bases for the positions and any evidence supporting the positions. Pre-hearing briefs shall be limited to ten (10) pages.
- (c) All briefs submitted in the proceeding (except prehearing briefs) must contain a table of contents referencing page numbers.

### **MISCELLANEOUS**

6. Two (2) courtesy copies of any document filed with the Commission Secretary pursuant to 18 C.F.R. ' ' 385.2001-385.2012 in a proceeding before Judge Cowan should be provided to the Judge on the same day the document is filed with the Commission Secretary.

7. Any communications to the undersigned shall be directed through my law clerk, Monica Berry. Ms. Berry can be reached at 202-502-8595 or [monica.berry@ferc.gov](mailto:monica.berry@ferc.gov).

### **E-FILING**

8. All filings that are eligible under Rule 2001 must be electronically filed. *See* 18 C.F.R. § 385.2001(a)(1)(iii) (2002). Please refer to the Commission's website, [www.ferc.gov](http://www.ferc.gov), and the instructions under the "eFiling" link. Parties are encouraged to

conduct as much business as possible via electronic means. A master party list with E-mail addresses will be maintained by the office of the Presiding Administrative Law Judge.

**ENFORCEMENT / WAIVER**

9. It shall be counsel's responsibility to point out any violation or abrogation of these Rules by making a timely objection to the Judge. Counsel's failure to make such an objection shall constitute consent.

**William J. Cowan**  
**Presiding Administrative Law Judge**